

**SUBCHAPTER G : LOCATION STANDARDS FOR HAZARDOUS
WASTE STORAGE, PROCESSING, OR DISPOSAL**

§335.201. Purpose, Scope and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. Except as otherwise provided in this section, this subchapter applies to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984. These sections do not apply to the following:

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revision submitted pursuant to §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits);

(2) permit applications filed pursuant to §335.2(a) of this title (relating to Permit Required) which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984; and

(3) on-site remedial actions conducted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 United States Code §9601 et seq., as amended by the Superfund Amendments Reauthorization Act of 1986 or the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13.

(b) The standards contained in §§335.204(a)(6)-(9), 335.204 (b)(7)-(12), 335.204(c)(6)-(11), 335.204(d)(6)-(11), 335.204(e)(8)-(13) are not applicable to facilities that have submitted a notice of intent to file a permit application pursuant to §335.391 of this title (relating to Pre-Application Review) prior to May 3, 1988 or to facilities that have filed permit applications pursuant to §335.2(a) of this title (relating to Permit Required) which were submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and that were declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to May 3, 1988.

(c) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under the Solid Waste Disposal Act to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

§335.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Active geologic processes--Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

Area subject to active shoreline erosion--A coastal area where shoreline erosion has been documented within historic time.

Areal expansion of an existing facility--The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

Areas of direct drainage--Those land areas from which surface water runoff could flow into a lake used to supply public drinking water.

Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Critical habitat of an endangered species--An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

Erosion--The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

Existing hazardous waste management facility--Any facility used for the storage, processing or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title (relating to Permit Required) which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

New hazardous waste management facility--Any facility to be used for the storage, processing or disposal of hazardous waste and which is not an existing hazardous waste management facility.

One hundred-year floodplain--Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

Public water system--A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

Regional aquifer--An aquifer which has been identified by the Texas Water Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report No. 238).

Residence - the structure and surrounding property within the property boundaries not to exceed 100 feet from the structure in all directions.

Secondary containment--A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or discharges within the structure until such waste can be removed.

Sole-source aquifer--An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the U. S. Environmental Protection Agency. The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the offices of the executive director.

Storage surface impoundment--A surface impoundment from which all wastes and waste-contaminated soils are removed at the time of closure of the impoundment.

Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a

prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§335.203. Site Selection to Protect Groundwater or Surface Water.

The commission may not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

- (1) Active geologic processes such as flooding, erosion, subsidence, submergence and faulting;
- (2) Groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge and aquifer recharge or discharge conditions;
- (3) Soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water; and
- (4) Climatological conditions.

§335.204. Unsuitable Site Characteristics.

- (a) Storage or processing facilities (excluding storage surface impoundments).

- (1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

- (2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

- (3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks or discharges.

- (4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) The regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters per second (cm/sec), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) Secondary containment is provided to preclude migration to groundwater from spills, leaks or discharges.

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) Secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks or discharges; or

(B) The soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A storage or processing facility (excluding storage surface impoundments) may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A storage or processing facility (excluding storage surface impoundments) may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A storage or processing facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(9) A storage or processing facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents

that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. A new commercial hazardous waste management facility land treatment unit may not be located in a 100-year flood plain, unless the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) It is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) The regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec, or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil units(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec, unless:

(A) It is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) The soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A land treatment facility may not be located within 1000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. The measurement of distances required for a new hazardous waste land treatment facility shall be taken from a perimeter around the proposed new hazardous waste land treatment

management unit. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste land treatment unit.

(7) A land treatment facility may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(8) A land treatment facility may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(9) A land treatment facility may not be located within 1000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(10) A land treatment facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(11) A land treatment facility may not be located on a barrier island or peninsula.

(12) A land treatment facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(c) Waste piles.

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) The regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) Secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges.

(5) A waste pile may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) Secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) The soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A waste pile may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A waste pile may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A waste pile may not be located within 1000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(9) A waste pile may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(10) A waste pile may not be located on a barrier island or peninsula.

(11) A waste pile may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(d) Storage surface impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) The regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) The impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) The impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) The soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A storage surface impoundment may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A storage surface impoundment may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A storage surface impoundment may not be located within 1000 feet of an area of active coastal shoreline erosion if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(9) A storage surface impoundment may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(10) A storage surface impoundment may not be located on a barrier island or peninsula.

(11) A storage surface impoundment may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older,

slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(e) Landfills. Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) Except as provided in subparagraphs (A) and (B) of this paragraph, a landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet. Any landfill within the 100-year floodplain must be designed, constructed, operated and maintained to prevent physical transport of any hazardous waste by a 100-year flood event.

(A) The areal expansion of a landfill in a 100-year floodplain may be allowed by the commission if the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(B) A new commercial hazardous waste management facility landfill unit may not be located in a 100-year floodplain, unless the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer.

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) It is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) The regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) It is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) The soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A landfill may not be located within 1000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. The measurement of distances required for a new hazardous waste landfill shall be taken from a perimeter around the proposed new hazardous waste landfill. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste landfill unit.

(7) A landfill, at which hazardous waste is received for a fee, may not be located in the 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

(8) A landfill may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(9) A landfill may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(10) A landfill may not be located within 1000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(11) A landfill may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(12) A landfill may not be located on a barrier island or peninsula.

(13) A landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual

or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(14) For purposes of this subchapter, any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(f) Injection Wells. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

§335.205. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to Unsuitable Site Characteristics).

(b) The commission shall not issue a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill.

(c) No permit shall be issued for a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within ½ of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(d) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (c) of this section, distances shall be measured from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(e) No permit shall be issued for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than ½ mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park unless the applicant demonstrates to the satisfaction of the commission that the

facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries.

(f) The measurement of distances required in subsections (a), (c), (d), and (e) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by subsections (a), (c), (d), and (e) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(g) The measurement of distances required in subsections (a), (c), (d), and (e) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

(h) No permit shall be issued for a Class I injection well, a proposed hazardous waste management facility other than a Class I injection well, or a capacity expansion of an existing hazardous waste management facility if a fault exists within 2 ½ miles from the proposed or existing wellbore of the Class I injection well or the area within the cone of influence whichever is greater, or if a fault exists within 3,000 feet of the proposed hazardous waste management facility other than a Class I injection well or of the capacity expansion of an existing hazardous waste management facility unless the applicant demonstrates to the satisfaction of the commission unless previously demonstrated to the commission or to the United States Environmental Protection Agency that:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous waste will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(i) Nothing in this subchapter shall be construed to require the commission to issue a permit notwithstanding a finding that the proposed facility would satisfy the requirements of §335.203 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.204 of this title (relating to Unsuitable Site Characteristics).

(j) The term "Waste-derived fuel" when used in this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

§335.206. Petitions for Rulemaking.

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in the Texas Solid Waste Disposal Act, Texas Health & Safety Code Ann. Chapter 361 (Vernon) §361.103, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply with the requirements of §275.78 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.